MAY 26 1942
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 1198

J. R. MASON,
Petitioner,

vs.

ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI AND TO BRIEF IN SUPPORT THEREOF.

A. L. COWELL,
Belding Building, Stockton, California,
Counsel for Respondent.

L. C. SMITH,
Masonic Building, Redding, California,
Of Counsel.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

Subject Index

		Page
I.	Defects in the petition	2
II.	Why the petition should be denied	6
	1. Matters that are res judicata	6
	2. Second point in the brief is res judicata and made here for the first time	11
	3. Objection to time limit not properly presented	13
	4. Court's right to enjoin	15

Table of Authorities Cited

Cases

	Pages
American United Life Insurance Company v. Haines City, 117 Fed. (2d) 574	10
Case v. L. A. Lumber Products Company, 308 U. S. 106, 84 L. Ed. 110, 60 S. Ct. 1	11
Chicago, M., St. P. & P. R. Co., In re, 124 Fed. (2d) 754	13
Chicot County Drainage District v. Baxter State Bank, 308 U. S. 371, 84 L. Ed. 329, 60 S. Ct. 317	9, 14
Dealtry v. Posse School, Inc., 100 Fed. (2d) 470	15
Lorber v. Vista Irrigation District, No. 9873, decided April 16, 1942, ... Fed. (2d)	5, 12
Spellings v. Dewey, 122 Fed. (2d) 652	8
United States v. Bekins, 304 U. S. 27, 82 L. Ed. 1137, 58 S. Ct. 811	6

Codes and Statutes

Bankruptcy Act:	
Chapter IX	10, 14
Section 2	15
Section 2, subd. (a), item 15	15
Section 77B	12, 15
Section 83, subd. (f)	7
11 U. S. C. Section 403	7, 8
28 U. S. C. Section 373	15
28 U. S. C. Section 383	15

Miscellaneous

Black on Judgments, Second Edition, Sec. 509	10
Rules of the Circuit Court of Appeals, Rule 20, subd. 2(b)	3
Rules of the Supreme Court of the United States, Rule 38, para. 2	14

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 1198

J. R. MASON,
Petitioner,
vs.
ANDERSON-COTTONWOOD IRRIGATION DISTRICT,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI AND TO BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Anderson-Cottonwood Irrigation District acknowledges receipt of copies of the petition herein for a writ of certiorari and the brief in support thereof, and in reply thereto will point out some defects in the petition and then show additional reasons why it should be denied.

I. DEFECTS IN THE PETITION.

On pages 3, 4 and 5 of the petition is a "Summary Statement of the Matter Involved". The third paragraph of this statement gives certain facts about the bond issues of the district and states that these facts are not disclosed by the Record, although in the interlocutory decree confirming the district's plan of composition, which decree is set forth in full beginning at page 46 of the Record, full details about the various bond issues of the district are given at page 49 of the Record. There is also given the amount theretofore paid on the bonded indebtedness and the amount of the indebtedness is given as $1,121,000 principal amount of bonds, plus accrued interest thereon maturing on and subsequent to July 1, 1931.

Appeals were taken from this interlocutory decree, which were dismissed by the Circuit Court of Appeals for the Ninth Circuit. The mandate dismissing these appeals is set forth in the Record at pages 201 et seq.

On page 4 of the petition for certiorari is a summary of the final decree which was entered by the District Court July 9, 1941 (R. 204). From this decree the petitioner herein took an appeal, but the Circuit Court of Appeals for the Ninth Circuit affirmed the final decree in a decision which is given on pages 246 and 247 of the Record. As this decision is based largely upon the decision of the same Court on the same day in a case involving the final decree in favor of Merced Irrigation District, the opinion in the Merced case is given in full at pages 248 and 250 of the Record.

At page 5 of the petition for certiorari is a statement that "by proper specification of error and presentation of points on appeal" the Petitioner sought a reversal of the final decree in this case principally on four grounds. The second of these grounds is thus stated:

> "That the court had exceeded its jurisdiction and statutory authority by placing a limit of twelve months within which bondholders could present their obligations and receive anything pursuant to the plan of composition."

In the opinion of the Circuit Court of Appeals at page 247 of the Record is a flat statement that this point was not properly brought before the court. It is shown by the Circuit Court of Appeals that in the District Court Appellant filed a statement of points in which he designated 22 errors proposed to be relied upon upon the appeal (R. 223). Point 14 was stated as follows:

> "The court erred in fixing a period of twelve months within which creditors of the District must present their claims to the Registrar for payment pursuant to the plan of composition, in that such term should not be restricted to the period of twelve months."

The court then said that in the specification of errors in his brief, Appellant failed to mention this point, nor did he touch upon it in any way until the oral argument. The Circuit Court of Appeals then points out that Subdivision 2(b) of Rule 20 of the Rules of that court requires that the brief contain "a specification of errors relied upon" and says:

> "In view of the failure to specify the point or to argue it in the brief, the alleged error will not be considered."

The rule is obviously reasonable and we submit that the Circuit Court of Appeals was perfectly justified in refusing to consider this point.

On pages 6 and 7 of the petition is a statement of "Questions Presented". Only four questions are presented and none of them contains any intimation of any intention to press the point which the Circuit Court of Appeals ignored because it was not properly presented or considered in the brief. However, in the "Reasons for Granting the Writ", set out on pages 7 to 9 of the petition, the Petitioner states as his third reason, on page 8, that this Court should determine whether the courts can, by final decree in such cases as this, "limit the time within which claims may be presented after the entry of the final decree", although he has not included that as one of the "Questions Presented" by the petition.

Furthermore, the brief in support of the petition and printed therewith does not contain any argument in support of this assertion in the petition that the court had no right to fix a time limit within which bonds could be deposited for payment. At page 21 of the brief the third statement of alleged error does say that the Court erred "in fixing a time limit within which the bonds could be deposited and paid", but no authorities are cited and no argument is made in support of that statement. It is therefore uncertain why Petitioner referred to this point at all.

The fourth ground on which Petitioner says that he sought a reversal of the final decree is stated as follows:

> "That the decree is totally unsupported by findings or adjudication warranting and determining that the plan of composition was fair and equitable."

No such ground of reversal was urged by the petitioner either in the assignment of errors filed with the District Court (R. 223 et seq.) or in the "Statement of Points on Which Appellant Intends to Rely on Appeal" (R.236) or in his brief before the Circuit Court of Appeals. The brief contained no discussion as to the inadequacy or lack of findings and the point is not mentioned in the opinion of the Circuit Court of Appeals in either this case or the Merced Irrigation District Case.

The petitioner, by his former attorney, at pages 213 to 215 of the Record proposed a modified form of final decree and supported it with a memorandum which is set forth in full at pages 216 to 219 of the Record. There is nothing either in this proposed final decree or in the memorandum supporting it which intimates any dissatisfaction with any findings.

As a matter of fact, this point is an afterthought *and is raised here for the first time* because of the decision of the Circuit Court of Appeals for the Ninth Circuit in

> *Lorber v. Vista Irrigation District,* No. 9873, decided April 16, 1942,..... Fed. (2d).....

wherein the Circuit Court of Appeals on an appeal from an interlocutory decree confirming the plan of composition of Vista Irrigation District remanded the case to the District Court for further findings.

II. WHY THE PETITION SHOULD BE DENIED.

On pages 7 and 8 of the petition, four alleged reasons are given why it should be granted. The brief accompanying the petition discusses three alleged errors of the Circuit Court of Appeals. The third point of the brief charges actually two separate errors, but Petitioner discusses only one of them.

1. Matters that are res judicata.

The first two of the alleged reasons for granting the petition are treated under one heading in the brief and constitute an attempt to revive the appeal from the interlocutory decree, which was dismissed by the Circuit Court of Appeals. Therefore, the interlocutory decree is now *res judicata* of all the matters adjudicated therein. It confirmed the District's plan of composition and the statute itself made the plan binding on the creditors, on the sole condition that the District should make the consideration provided for in the plan available for them. This was done and the essential part of the final decree is the determination that the consideration had been made available for the creditors. The petitioner states that the case of

United States v. Bekins, 304 U. S. 27, 82 L. Ed. 1137, 58 S. Ct. 811,

arose out of a motion to dismiss the petition on the ground that the act was unconstitutional. The district involved in that case was an irrigation district of exactly the same type as the Anderson-Cottonwood Irrigation District and this court, after thoroughly exploring the applicability of the new law to a California irrigation district, held the statute to be "a valid enactment". The petition herein does not attempt to show that the plan of composition of Anderson-Cottonwood Irrigation District, which was confirmed by the District Court and thus made conditionally binding upon the creditors, was not in strict accordance with the provisions of the statute.

The questions raised in the first two alleged reasons for granting the writ of certiorari might properly have been raised on the appeal from the interlocutory decree. That appeal was dismissed and the interlocutory decree became a conclusive adjudication. The Circuit Court of Appeals determined, in accordance with its opinion in the Merced case (R.249-250), that if there was any interference with governmental functions of the state or property dedicated as a "public trust", that interference was effected by the interlocutory decree, because the final decree determined nothing except that the district had carried the interlocutory decree into effect, and the Court held that appellant was not now in a position to complain of the interlocutory decree.

The final decree, by determining that the district had made available for the creditors the consideration provided for in the plan of composition, put into effect the provision of Subdivision (f) of Section 83

of the Bankruptcy Act (11 U.S.C. Sec. 403), that the plan would become binding on the creditors when the consideration was made available for them. Of course, that released the district from any obligation to the creditors except as provided in the plan.

By some occult reasoning, this is said to be an interference with the power of the district to levy taxes. Of course, it is only a determination that the district is no longer obligated to its creditors except as provided in the plan of composition. If it owes them nothing more than the plan provides, of course, it has no duty to levy taxes beyond its obligation. This is no more an interference with the *power* of taxation than would be effected by a voluntary agreement with its bondholders to pay them thirty cents on the dollar.

Petitioner's brief on page 12 states that the decree, by its terms, interferes with political and governmental powers of Respondent and at page 18 of the brief it is said that the decision below is in direct conflict with that of the Circuit Court of Appeals in

Spellings v. Dewey, 122 Fed. (2d) 652.

That was an appeal from an interlocutory decree confirming a plan of composition of a drainage district. The decree sought to preserve the status of the commissioners of the district, and the Circuit Court of Appeals held that the District Court could not interfere with the right to elect new commissioners or to petition the county court to remove all or any of the commissioners and appoint their successors. This provision of the interlocutory decree in that case was a plain violation of the provision of the statute against

interference with any of the political or governmental powers of the petitioner.

Reading the final decree in this case, we fail to find in any of its terms any such interference. It does not forbid the district to do anything, but in accordance with the statute making the plan of composition binding on the creditors when the consideration provided for in the plan has been made available for them, it cancels and annuls the old bonds and other obligations of the district affected by the plan, except as provided therein, thus making it unnecessary for the district to levy further taxes for the old bondholders, as they are to be paid in cash.

But, as was held by the Circuit Court of Appeals, petitioner is not in a position to complain of this provision in the final decree. The interlocutory decree confirmed the plan of composition, and the statute itself made it conditionally binding upon the creditors. Therefore, any objections to the plan of composition could have been and should have been raised on the appeal from the interlocutory decree, which is expressly provided for by the statute. As the appeal from the interlocutory decree has been dismissed, that decree has now become conclusive. This fact was emphasized in

> *Chicot County Drainage District v. Baxter State Bank*, 308 U. S. 371, 84 L. Ed. 329, 60 S. Ct. 317,

in which Mr. Chief Justice Hughes in delivering the opinion of the Court said:

> "The remaining question is simply whether respondents, having failed to raise the question in

> the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, 'but also as respects any other available matter which might have been presented to that end'."

See also Black on Judgments, Second Edition, Sec. 509, where it is said:

> "It is true that, so far as concerns the further prosecution of the same case, an interlocutory judgment for the plaintiff determines every fact alleged in the declaration which, but for such judgment, the plaintiff would have to prove . . . and precludes the parties from introducing any evidence to enlarge, lessen or defeat the right so determined."

In petitioner's brief, page 20, it is said that it has been held in

> *American United Life Insurance Company v. Haines City,* 117 Fed. (2d) 574,

that an interlocutory decree is not "final" under this act, meaning Chapter IX of the Bankruptcy Act. That case was an appeal from an order allowing a modification of a plan of composition after it had been confirmed by interlocutory decree and after the time for an appeal had expired. It was contended that the decree became final after the expiration of ten days after it was entered. The court, however, said:

> "Like other interlocutory judgments, it remains in a measure under the court's control *if not appealed from.*" (Italics ours.)

Of course, if an appeal is taken from the interlocutory decree and dismissed, as in the case at bar, the interlocutory decree becomes a final and conclusive adjudication of the matters adjudged therein.

2. Second point in the brief is res judicata and made here for the first time.

The second point considered in the brief in support of the petition is that the court erred in entering the final decree determining that the plan was fair, equitable and for best interests of creditors.

This was determined by the interlocutory decree and was merely reiterated in the final decree to show the basis for determining that the district had made available for its creditors the consideration provided for in the plan of composition. It is not a part of the matters adjudged but is set forth as a part of a "finding" of certain facts that were determined by the interlocutory decree. There is no requirement in the statute that findings are necessary for the final decree, whose essential purpose is to determine that the petitioner has made available for the creditors the consideration provided for in the plan theretofore confirmed.

Petitioner's brief at page 19 cites

Case v. L. A. Lumber Products Company, 308 U. S. 106, 84 L. Ed. 110, 60 S. Ct. 1,

in support of his statement that the words "fair and equitable" are "words of art and as findings impart nothing whatsoever". No such holding was made in that case. The opinion there states that the words "fair and equitable" as used in Section 77B of the Bankruptcy Act "are words of art which, prior to the advent of Section 77B, had acquired a fixed meaning through judicial interpretations in the field of equity receivership reorganizations". The case was reversed, not because these words as findings imparted nothing whatsoever, but because an exhaustive review of the evidence showed that the plan was not "fair and equitable".

As we have heretofore seen, no complaint was made in the Circuit Court of Appeals, either on the appeal from the interlocutory decree or on the appeal from the final decree, as to the inadequacy of any finding or as to any lack of findings. The point is raised here for the first time because the Ninth Circuit Court of Appeals in

Lorber v. Vista Irrigation District (supra)

on an appeal from an interlocutory decree held that the findings were inadequate.

Petitioner's brief, at page 20, declares that this decision is a reversal of the former position of the Circuit Court of Appeals in affirming several decisions confirming plans of composition of various irrigation districts. However, he does not claim that all these decisions should now be reviewed by this Court. Obviously, under the doctrine of *res judicata,* this Court could not now disturb these decisions. How then

could it disturb the confirmation of Respondent's plan of composition by an interlocutory decree, from which an appeal has been taken and regularly dismissed?

Petitioner's brief at page 21 declares that the decision below is in direct conflict with that of the Circuit Court of Appeals of the Seventh Circuit in the case entitled

In re Chicago, M., St. P. & P. R. Co., 124 Fed. (2d) 754.

This was a complicated case involving the reorganization of a vast railroad company. The opinion is long and determined that the findings were not sufficient. Petitioner does not point out any conflict between that decision and the decision of the Circuit Court of Appeals in this case, but utterly ignores the obvious distinction between a proceeding for the confirmation of a plan of composition of a public taxing agency and a proceeding for the reorganization of a private corporation.

3. Objection to time limit not properly presented.

The third point considered in the brief, at page 21, is that the court erred in retaining jurisdiction of the cause, in fixing a time limit within which the bonds could be deposited for payment, and in enjoining the creditors from pursuing any rights they had in the state courts or otherwise. This really includes two points.

As we have heretofore seen, the Circuit Court of Appeals held that the point about the time limit had not been properly presented to that court and was

therefore not decided. We understand that after such a violation of the rules of the Circuit Court of Appeals the point will not be considered here on a petition for certiorari. Furthermore, this point is not referred to in the petition as one of the "Questions Presented". As we understand Paragraph 2 of Rule 38 of this Court, only the questions specifically presented in the petition will be considered.

No showing is made by the petitioner that the time limit fixed in the final decree is unreasonable or unjust to him and no authority is cited to the effect that the court had no right to fix a limit.

It might also be said that in the opinion in

Chicot County Drainage District v. Baxter State Bank (supra)

the decree of the District Court confirming the drainage district's plan of composition was summarized. It contained a provision for exactly such a time limit for the presentation of old bonds for payment as is fixed in the final decree in this case. That decree was rendered under the old Chapter IX, which was held to be unconstitutional. The statute did not authorize specifically any time limit within which bonds could be presented for payment, but the opinion of this court contained the following:

> "It appears that the proceedings in the District Court to bring about a plan of readjustment were conducted in complete conformity to the statute."

4. Court's right to enjoin.

As to the power of the court to issue injunctive orders, item 15 of Subdivision (a) of Section 2 of the Bankruptcy Act invests courts of bankruptcy with power to "make such orders, issue such process and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this act".

In the Judicial Code also, by Section 373 of Title 28 U. S. C., the courts are given power "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law". Such an incidental injunctive provision as is contained in paragraph (c) of the final decree to prevent the harassing of the district by the presentation of claims based on the old bonds is certainly "agreeable to the usages and principles of law".

Complaint is made that the decree does not comply with Title 28, Section 383 U. S. C. The same point was made in

Dealtry v. Posse School, Inc., 100 Fed. (2d) 470.

This was a proceeding under Section 77B of the Bankruptcy Act and the Circuit Court of Appeals of the First Circuit held that objections to the validity of an injunction issued in that case were "without merit" because of the general power to enjoin in aid of its jurisdiction given to the court in Section 2 of the Bankruptcy Act. On the point as to the form of the order, the court said:

> "Failure to set forth the reasons for the order does not invalidate it. Lawrence v. St. Louis-S. F. Ry Co., 274 U. S. 588, 589, 47 S. Ct. 720, 71 L. Ed. 1219; Arkansas Railroad Commission v. Chicago, etc., R. Co., 274 U. S. 597, 47 S. Ct. 724, 71 L. Ed. 1224.
>
> "Moreover, the reasons for issuing the injunction in this case, while not formally expressed, were apparent from the papers on file and evidently well understood by all parties."

Paraphrasing the Court's language, the reasons for the injunctive part of the final decree in this case are apparent from the papers on file and are well understood by all the parties, and the provisions in the final decree that the old obligations are "cancelled, annulled and held for naught as enforcible obligations of the petitioning district", except as provided in the decree, constitute a statement of the reasons for the injunctive order, which sets forth specifically the acts that are to be restrained.

In view of the foregoing, we believe the petition herein for a writ of certiorari should be denied.

Dated, Stockton, California,
May 18, 1942.

Respectfully submitted,
A. L. COWELL,
Counsel for Respondent.

L. C. SMITH,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this.....day of May, 1942.

.....

.....

Counsel for Petitioner.